

April 12, 2002

Office of the Secretary, Room 159
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington DC 20580

RE: Telemarketing Rulemaking Comment
FTC File No. R411001

1. I am writing to comment on the proposed changes to amend the FTC's Telemarketing Sales Rule, 16 CFR Part 310.
2. Our company does not make telephone sales. We do, however, telephone potential customers and present them with an opportunity to learn about our products and services and then set an appointment with us if they would like to learn more. Most of our calls are the result of referrals by an existing and satisfied customers to friends, relatives, or associates of the customers. We do no other advertising.
3. The proposed changes to require formerly exempt companies to comply with §310.4(a)(1) and (6), and §310.4(b) and (c) are unwarranted and unfair for a number of reasons. First, it would unfairly interfere with our right to operate our business and to inform potential customers of our products and services. Most people have never heard of our company but are quite interested when they do. By forcing us to comply with 16 CFR Part 310 (i.e. prohibiting calls to people who sign up for a national do not call list), we will never get the opportunity to share the benefits of our service with these people.
4. If we are required to purchase the national do not call list, depending on the price charged, to a small company like ours, the cost may be burdensome. Certainly there will be costs involved in maintaining and updating the list and programming computers so that the list is useful. We do not use dialers or currently have software that is customized to take a list and sort it so we will be forced to incur additional costs.
5. If a list were developed, would companies have to buy the whole list or could they buy only parts? How would it be sorted? Who is going to ensure that when a person moves and changes telephone numbers the phone number is removed from the list? Are there penalties for not de-listing a phone number when it is no longer in a person's name? Who will be responsible for ensuring that a person signing up not to be called is actually that person and has the right to restrict that telephone number? If the husband signs up but the wife doesn't, can the wife be called? What about other adult people who use that telephone? It seems there is no attempt to address conflicts with state laws. Is it the intent that if a company complies with federal law it will not have to worry about state laws? Currently many states have lists which must be purchased as well as different definitions of what telemarketing is, who must comply, what the penalties are, what rules must be followed etc. This places tremendous additional burdens on small companies just trying to figure out what not to do let alone finding the means to ensure compliance. Small companies do not have lawyers on staff to do these things.
6. Under the proposed amendment, there seems to be no attempt to reconcile the TSA with the TCPA, 47 USC 227 or 47 CFR 64.1200. This creates additional problems and expenses for business. Currently there are people who brag about making a living suing companies under the

TCPA. Clubs, web sites and chat rooms have sprung up where people proudly boast about how they trapped companies and got them to pay. Under the current proposal a consumer could avoid putting his or her name on the do not call list yet still sue under the TCPA or similar state laws.

7. Our company was sued by such an individual in California. In court, under oath he stated that when we or any other company called, he intentionally would not ask to be put on their do not call list but rather would make a statement such as “I can’t talk right now” or “I have a call on the other line” hoping to induce the company to call back. When they called back, the “more than once” rule would be triggered and he would sue. He alleged willful violations on the part of the companies and numerous other violations. He stated he made hundreds of thousands of dollars a year this way. He had form letters and even a form lawsuit he would send to threaten companies. He explained that after that most companies simply FOTM. When asked what FOTM meant, he said, “Fork over the money”. (Many apparently paid rather than go to court.) In fact, this individual, in just one day, in just one San Diego court, filed over 20 suits against telemarketing companies. He said he taught his wife, relatives and friends how to get on calling lists by signing up for contests, entering drawings and other means he had learned about in order to attract as many calls as possible. Is it the intent of congress, the FTC or the FCC to foster this kind of abuse? Will nothing be done to remedy it?
8. In summary, it seems that nothing has been proposed to address or prevent these types of abuses or reconcile the existing federal laws. Nothing seems to address conflicts with state laws. The changes to the exemptions came about apparently as a result of one consumer who received a call and couldn’t use a federal law to force the company not to call her again. Notwithstanding the simple fact that appointment setters do not want to call people who do not want to set an appointment, if the consumer felt she was being harassed legal remedies already exist. Additionally, I would guess the vast majority of consumers have telephone answering machines. How much trouble is it to let the machine answer the call to avoid what, at worst is an momentary annoyance? To enact legislation which would prohibit businesses from using the telephone to tell people about their services not only restrains them unfairly and takes away their right to speak but seems un-American. It is one thing to regulate sales made over the telephone to prevent fraud and other damage to consumers. It is entirely different to put a muzzle on a business so they can’t talk about what they do.
9. Please do not force exempt companies to comply with §310.4(a)(1) and §310.4(b) and (c).
10. Thank you for your consideration of these issues.

Sincerely,
Celebrity Prime Foods

Mark T. Gombar
President

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